

**Matter No.: 2017-LIT-009183**

**Entities:** Duke Energy Carolinas, LLC  
Duke Energy Progress, LLC

**Matter Name:** Analysis of Insurance Coverage for Alleged Coal Ash-Related Contamination

**Description:**

Legal analysis regarding potential claims for insurance coverage for alleged liability regarding alleged coal ash-related contamination.

**Matter No.: 2017-LIT-009096**

**Entities:** Duke Energy Carolinas, LLC  
Duke Energy Progress, LLC

**Matter Name:** Amy Brown, et. al. v. Duke Energy Carolinas, LLC and Duke Energy Progress, LLC

**Case Numbers & Courts:**

Superior Court for the State of North Carolina, Wake County  
Civil Action No. 17-CVS-10341

**Description:**

On August 23, 2017, Plaintiffs' counsel filed a class action suit against DE Carolinas and DE Progress on behalf of property owners living near nine (9) of Duke Energy's coal ash impoundments: Allen, Asheville, Belews Creek, Buck, Cliffside, Lee, Marshall, Mayo, Roxboro. The class is defined as those who are "well-eligible" under CAMA or those to whom Duke Energy has promised a permanent replacement water supply. Plaintiffs have demanded: (1) A class be certified; (2) the financial supplement release be deemed invalid and they be afforded the financial supplement without being required to sign a release; (3) They be awarded damages for property diminution and for undescribed physical injuries; (4) the Court Order Duke Energy

to perform certain unidentified abatement actions at the impoundments; and (5) their attorneys' fees be paid. On November 6, 2017, Plaintiffs' counsel filed a Motion to Amend the Complaint and to Join Additional Parties, as well as a Motion to Designate the Case as Exceptional under Rule 2.1. On December 5, 2017, Plaintiffs' counsel filed a Motion for Preliminary Injunction requesting the court to stay the 60-day time period in which well eligible neighbors have to accept the financial supplement after a permanent water supply has been established. In an effort to allow additional time for settlement negotiations, Duke Energy agreed to stay the 60-day time period until such time as the Preliminary Injunction is ruled on by the Court. A Stipulation to this effect was filed on December 8, 2017. On January 24, 2018, the parties entered into a Confidential Settlement Agreement, which resulted in the voluntary dismissal of the underlying class action with prejudice on January 25, 2018.

## **Matter Nos.: 2017-LIT-008780 & 2016-LIT-007790**

**Entities:** Duke Energy Carolinas, LLC

Duke Energy Progress, LLC

**Matter Name: Historical Pollution Insurance Coverage - Coal Ash Remediation**

### **Case Numbers & Courts:**

Duke Energy Carolinas, LLC and Duke Energy Progress, LLC v. AG Insurance SA/NV, et. al;  
Case No. 17-CVS-5594 pending in the Superior Court for the State of North Carolina,  
Mecklenburg County

### **Description:**

On March 29, 2017, Duke Energy Carolinas, LLC ("DEC") and Duke Energy Progress, LLC ("DEP") filed a lawsuit in North Carolina Superior Court against more than 25 insurance companies seeking insurance coverage for coal ash-related liabilities under third-party liability insurance policies sold to DEC and DEP from 1971 to 1986. Specifically, DEC and DEP seek coverage with respect to costs they have incurred and will incur pursuant to their liabilities under the North Carolina Coal Ash Management Act, the federal CCR Rule, and South Carolina law at 15 coal-fired power plants in North Carolina and South Carolina. In the litigation the defendant

insurers have asserted dozens of defenses to coverage. Any net insurance recoveries from the lawsuit will be used to reduce customer coal ash costs.

Pursuant to Case Management Orders entered by the court, the parties are permitted to take up to 120 fact witness depositions and designate 30 expert witnesses. From approximately August 2017 through January 2019, the parties engaged in extensive fact discovery, including the production of over 12 million pages of documents and the deposition of 39 witnesses to-date.

On January 24, 2019, the court granted the parties' joint motion for a four month stay of the case from February 1, 2019 through June 2, 2019 to allow the parties to discuss potential settlement. If the case is not fully resolved by the end of the stay period, the litigation will resume. Under an Amended Case Management Order, following the stay period fact discovery is scheduled to end on July 10, 2019, and expert discovery is scheduled to end on January 14, 2020. Post-discovery dispositive motions must be filed no later than February 14, 2020. Trial is scheduled to commence on August 31, 2020.

**Matter No: 2017-LIT-008391**

**Entity: Duke Energy Carolinas, LLC**

**Matter Name: DEC General Lit – Condemnation: William H. Baker  
Marital Trust adv. Duke Energy Carolinas, LLC (Richburg  
Retail Substation)**

**Court: N/A**

**Case Number: N/A**

**Description:**

In 2017, Duke Energy Carolinas, LLC (“DEC”) was in the process of acquiring real estate for the construction of a new substation in Richburg, Chester County, South Carolina. DEC and its outside counsel conducted extensive negotiations, including a meeting with counsel for interest landowners. There were also discussions and other communications between counsel. The matter was ultimately resolved without the need for litigation.

## **Matter No: 2015-LIT-007287**

**Entity:** Duke Energy Carolinas, LLC

**Duke Energy Progress, LLC**

**Matter Name:** Groundwater Claims (General Issues)

**Court:** N/A

**Case Number:** N/A

**Description:**

The pre-suit litigation strategy will focus on discussions with at least three groups of plaintiffs' lawyers (Charles Barone, Brian Bryce, and Mona Lisa Wallace) who claim that their clients' properties have been harmed by groundwater contamination from Duke Energy's coal ash basins. During the initial stages of these matters, the Company will be prepared to engage in pre-suit mediation in an effort to come to a resolution more quickly than through litigation. Regardless of whether counsel will accept a proposal for mediation, Duke Energy will be prepared to offer a Property Protection Plan that would compensate plaintiffs who actually sell their homes for any diminution in value below an agreed upon fair market baseline. This matter will include any expert fees associated with the development of the Property Protection Plan.

## **Matter No.: 2014-LIT-006875**

**Entity:** Duke Energy Carolinas, LLC

**Matter Name:** Coal Ash Basins - Yadkin Riverkeeper, Inc. and  
Waterkeeper Alliance, Inc. v. Duke Energy Carolinas, LLC  
(Buck Citizen Suit)

**Case Number & Court:**

*Yadkin Riverkeeper, Inc., and Waterkeeper Alliance, Inc. v. Duke Energy Carolinas, LLC*, Civil Action No. 14-CV-753, in the United States District Court for the Middle District of North Carolina

**Description:**

On September 3, 2014, following a 60-day notice of intent served on July 1, 2014, the Yadkin Riverkeeper, Inc. and Waterkeeper Alliance, Inc. filed a citizen suit against Duke Energy Carolinas, LLC alleging unpermitted discharges to surface water and groundwater violations at the Buck Steam Station (the “Buck Federal Citizen Suit”). On January 5, 2015, Duke Energy Carolinas filed a Motion to Dismiss for failure to state a claim and an alternative Motion to Stay. On October 20, 2015, the court issued an order denying Duke Energy Carolinas’ Motion to Dismiss and Motion to Stay. The court found that the NCDEQ had not diligently prosecuted the DEC State Enforcement Litigation and also that the groundwater claims may proceed in federal court because the groundwater serves as a conduit for contaminants to move from the ash basins to waters of the United States. On September 28, 2016, Duke Energy Carolinas attended a court-ordered mediation with Plaintiffs. Based on Duke Energy Carolinas’ decision to select Buck Steam Station as one of the three sites for beneficiation under House Bill 630, an agreement was reached to settle the Buck Federal Citizen Suit, and for Plaintiffs to dismiss the claims related to the Buck Steam Station in the DEC State Enforcement Litigation. A Joint Stipulation of Dismissal with prejudice was filed on December 23, 2016. This matter is now closed.

## **Matter No.: 2014-LIT-006752**

**Entities:**            **Duke Energy Carolinas, LLC**  
**Duke Energy Progress, LLC**

**Matter Name: Coal Ash Basins - State Enforcement Litigation**

### **Case Numbers & Courts:**

Duke Energy Carolinas, LLC - Civil Action No. 13-CVS-14661 pending in Superior Court for the State of North Carolina, Mecklenburg County

Duke Energy Progress, LLC – Civil Action No. 13-CVS-11032 pending in Superior Court for the State of North Carolina, Wake County

### **Description:**

In the first quarter of 2013, Duke Energy Carolinas, LLC ("DEC") and Duke Energy Progress, LLC ("DEP") received letters from the Southern Environmental Law Center ("SELC") on behalf of its clients, various environmental organizations, indicating its intent to file citizen suits for alleged unpermitted wastewater and groundwater discharges from coal ash basins at the Riverbend and Asheville Steam Stations. Notice of intent to sue is a required prerequisite to bringing such a suit under the Clean Water Act ("CWA"). To date, the following cases have been filed:

**State of North Carolina ex rel Department of Environment and Natural Resources, Division of Water Quality v. Duke Energy Carolinas, LLC (Remaining Six DEC Plants):**

On August 16, 2013, Department of Environment and Natural Resources ("DENR") filed a complaint against each of the remaining six DEC plants in North Carolina, alleging violations of the CWA and violations of the North Carolina groundwater standards. The Catawba Riverkeeper intervened in the case. On May 3, 2014, additional environmental groups were permitted to intervene in the case with respect to all six remaining DEC plants. On June 1, 2016, the court entered partial summary judgment as to the Dan River plant. The case continues as to the remaining five plants (Allen, Belews Creek, Buck, Cliffside, and Marshall), although the SELC's clients dismissed their claims against Buck as part of the federal settlement.

**State of North Carolina ex rel Department of Environment and Natural Resources,  
Division of Water Quality v. Duke Energy Progress, LLC (Remaining Six DEP Plants):**

On August 16, 2013, DENR filed a lawsuit in Wake County Superior Court pertaining to discharges at the remaining six DEP plants in North Carolina, alleging violations of the CWA and violations of the North Carolina groundwater standards. In 2014, additional environmental groups were permitted to intervene in the case with respect to the six plants. On April 14, 2016, the court entered partial summary judgment as to the Cape Fear, H.F. Lee, Sutton, and Weatherspoon plants. The case continues as to the remaining two plants (Mayo and Roxboro).

**All Cases:**

These state court cases have been transferred to a single judge who is hearing the matters together.

On July 10, 2015, DEC and DEP filed Motions for Partial Summary Judgment for 7 of the 14 NC sites involved these cases. There were two motions. The first addressed the 4 “high priority” plants (Riverbend, Asheville, Dan River and Sutton) for which the method of closure has been directed by the Coal Ash Management Act (“CAMA”) (the “4-Plant Motion”). The second addressed 3 additional plants (H.F. Lee, Cape Fear and Weatherspoon) that were announced in conjunction with the Safe Basin Closure Plan to be closed through dewatering, excavation and lined storage (the “3-Plant Motion”). The primary basis for these motions was that there is no longer either a genuine controversy or disputed material facts about the relief for these 7 plants since DEC and DEP publicly committed to excavating basins at these sites. The court entered summary judgment on these plants in two orders: the “4-Plant Order” and the “3-Plant Order.” Among other things, these orders require DEC and DEP to submit closure plans calling for excavation of the basins at these seven plants. Litigation related to seven plants (H.F. Lee, Cape Fear, Weatherspoon, Asheville, Dan River, Riverbend, and Sutton) has concluded.

On August 18, 2016, Plaintiff-Intervenors filed a motion for partial summary judgment asking the court to make legal determinations about the existence and size of the compliance boundary at Allen, Cliffside, and Marshall, and to narrow the types of remedial options available under North Carolina law. DEC and DEP filed a response to the motion for summary judgment on October 17, 2016, as well as a cross-motion for summary judgment on jurisdictional grounds. The court denied both motions on Feb. 13, 2017.

On March 15, 2017, DEC and DEP filed a Notice of Appeal to the North Carolina Court of Appeals challenging the trial court's denial of their motion for summary judgment. On August 24, 2017, the SELC filed a motion to dismiss the appeal. The appeal was argued on February 8, 2018, and, on August 1, 2018, the court entered an order dismissing the appeal as interlocutory. On October 15, 2018, the parties attended a status conference with the court, at which the court agreed to postpone setting any trial dates while deferring to DEQ's ongoing administrative reviews and actions under CAMA. The court indicated that it would set another status conference in May 2019, and would like monthly progress reports until such date.